IN THE

Supreme Court of the United States

October Term, 1956

No. 6920

PARRIS SINKLER, *Petitioner*

v.

MISSOURI PACIFIC RAILROAD COMPANY, *Respondent*

RESPONDENT'S BRIEF
In Opposition to Petition for Writ of Certiorari

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CASES

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Questions Presented

Respondent takes exception to the Statement of Petitioner as to the Questions Presented. The Questions Presented are:

(1) Is Respondent liable under the Federal Employers Liability Act, 35 Stat. 65, 66, 45 U.S.C., Sec. 51, et seq., to its employee for an injury received by the employee, while working in the course and scope of his employment with Respondent, due to the negligence of an independent contractor.

(2) Did the contract between Respondent and Houston Belt & Terminal Railway Company fall within the prohibition of Section 5 of the Federal Employers Liability Act, 35 Stat. 66, 45 U.S.C., Sec. 55.

(3) Was there sufficient evidence to support the jury's finding that Houston Belt & Terminal Railway Company was the Agent of Respondent on the occasion in question.

Statement

Petitioner's statement is substantially correct, save for a few unwarranted conclusions which he drew.

Argument

Petitioner's first reason for the granting of the Writ has been decided adversely to his contention by decisions of this Court of long-standing. The Act itself, 45 U.S.C.A., Section 51, expressly provides that the carrier shall be liable "for such injury . . . resulting . . . from the negligence of any of the officers, agents, or employees of such carrier . . ." The intent of Congress is plain. The carrier is liable to its employees *only for the negligence of its officers, agents or employees.* There is no provision in the Act creating liability on the carrier for the negligent act of Third Parties.

The cases have uniformly adhered to the intention of Congress, as expressed in the plain wording of the Act. In the early case of *Robinson v. Baltimore & O. R. Company* (Sup. Ct., 1915), 237 U.S. 84, 59 L. Ed. 849, this Honorable Court rejected the contention that the Act covered employees of other carriers which were rendering

a service to the carrier. In that case, the precise issue before the Court was whether or not a Pullman Porter, who sustained an injury while working on a train, was an employee of the carrier within the meaning of the Act. The Court, in disposing of this contention, stated (Page 853 of 59 L. Ed.):

> "We are of the opinion that Congress used the words 'employee' and 'employed' in the statute in their natural sense, *and intended to describe the conventional relation of employer and employee.* It was well known that there were on interstate trains persons engaged in various services for other masters. Congress, familiar with this situation, did not use any appropriate expression which could be taken to indicate a purpose to include such person among those to whom the Railway Company was to be liable under the Act." (Emphasis ours)

The *Robinson Case, Supra,* was followed by this Court in the case of *Hull v. Philadelphia & Reading Railway Company* (Sup. Ct., 1920), 252 U.S. 475, 40 Sup. Ct. 358, 64 L. Ed. 670. In the *Hull Case, Supra,* the deceased was an employee of the Western Maryland Company, and was engaged in operating a Western Maryland train on a run which was partly on the tracks of the Defendant, Philadelphia & Reading Railway Co. While operating on the tracks of the Defendant, Hull was killed due to the negligence of the Defendant, at a time when his train was stopped pursuant to instructions given by the Defendant. The Plaintiff contended that Hull, at the time he was injured, was an employee of the Defendant. The Court, in rejecting this contention, stated (Page 673 of 64 L. Ed.), as follows:

"We hardly need repeat the statement made in Robinson v. Baltimore & O. R. Co., 237 U.S. 84, 94, 59 L. Ed. 849, 853, 35 Sup. Ct. Rep. 491, 8 N.C.C.A. 1, that in the Employers' Liability Act Congress used the words "employee" and "employed" in their natural sense, and intended to describe the conventional relation of employer and employee. The simple question is whether, under the (480) facts as recited and according to the general principles applicable to the relation, Hull had been transferred from the employ of the Western Maryland Railway Company to that of defendant for the purposes of the train movement in which he was engaged when killed. He was not a party to the agreement between the railway companies, and is not shown to have had knowledge of it; but, passing this, and assuming the provisions of the agreement can be availed of by petitioner, it still is plain, we think, from the whole case, that deceased remained for all purposes—certainly for the purposes of the act—an employee of the Western Maryland Company only. It is clear that each company retained the control of its own train crews; that what the latter did upon the line of the other road was done as a part of their duty to the general employer; and that, so far as they were subject while upon the tracks of the other company to its rules, regulations, discipline, and their orders, this was for the purpose of co-ordinating their movements to the other operations of the owning company, securing the safety of all concerned, and furthering the general object of the agreement between the companies. See Standard Oil Co. v. Anderson, 212 U.S. 215, 226, 53 L. Ed. 480, 485, 29 Sup. Ct. Rep. 252."

The principles applied by this Court in the *Hull Case, Supra,* and the *Robinson Case, Supra,* were applied by this Court in the case of *Linstead v. Chesapeake & Ohio Railway Co.,* (Sup. Ct., 1928), 276 U.S. 28, 72 L. Ed. 453.

In the *Linstead Case, Supra,* this Court upheld a recovery for the claimant because the evidence was sufficient to show that the deceased was doing the work of the Defendant, and that the Defendant had the right of control (Page 456 of 72 L. Ed.).

The rationale and holding of the Supreme Court in the above cases makes it clear beyond doubt that the Federal Employer's Liability Act is applicable only when the negligent party is an officer, agent, or servant of the employing carrier. In the *Robinson Case, Supra,* the Court, speaking through Justice Hughes, specifically said that Congress used the word "employee" in its natural sense. It necessarily follows that the carrier is not responsible for the negligent acts of the employees of an independent contractor, since the employees of the independent contractor are not employees of the carrier within the natural sense of the word "employee". In both the *Hull Case, Supra,* and the *Linstead Case, Supra,* the Court went into great detail to examine whose work was being done by the deceased and who had the right of control. In the *Hull Case, Supra,* the Court found that he was not doing the work of the negligent party and the negligent party did not have the right of control and hence, the Court denied a recovery. In the *Linstead Case, Supra,* the Court felt that the deceased was doing the work of the negligent party, and also that the negligent party had the right of control and hence, it upheld a recovery. In subsequent pages of this brief, we will show that the switching crew in question was not doing Respondent's work and Respondent did not have the right of control. The point we wish to make here is that all three of these cases are directly contrary to Petitioner's position on this point. One case specifically

says there must be an employer-employee relationship and the other two cases hold that there must be an employee relationship - at least temporary. Absent such relationship, there can be no recovery.

Petitioner may contend that the question of assignability or delegation of the functions of a common carrier were not involved in the above cases. Such contention will overlook the salient facts present in those cases. In the *Robinson Case, Supra,* the plaintiff's contract of employment was with the Pullman Company. Certainly his duties on the train were in the furtherance of interstate commerce. The Supreme Court in that instance refused to hold the Act applicable. Such refusal is tantamount to holding that while the work being done is for the ultimate benefit of the Railway Company, still if it is done under the direction and supervision of another master, the doing of such work does not make the man the employee of the carrier. This principle is expressed in the case of *Standard Oil v. Anderson* (Sup. Ct.), 212 U.S. 215, 29 S. Ct. 252, 53 L. Ed. 480.

In the *Hull Case, Supra,* the Western Maryland Co., with whom deceased had his contract of employment, was operating its train, pursuant to a contract over the tracks of the defendant. The plaintiff contended that since the Philadelphia & Reading had the non-delegable duty to operate its road and since Hull, an employee of the Western Maryland, was operating on the road of the Philadelphia & Reading, he was performing a non-delegable duty with the knowledge and assets of the Philadelphia & Reading and hence he was an employee of the Philadelphia & Reading. Such contention is shown at P. 671 of 64 L. Ed. The Court in its opinion ignored this argument and based its

decision on the question of control. Likewise the Court in the *Linstead Case*, *Supra*, based its decision on the question of control. See 72 L. Ed. PPs. 455-6. Accordingly, Respondent submits that both of these cases are directly contrary to Petitioner's position under this point.

Other cases which support Respondent's position on this point are as follows: *Louisville & N. Railway Co. v. Wing's Administratrix* (Kentucky, 1926), 281 S.W. 171; *Wadiak v. Illinois Central Railway Co.*, 208 F. 2d 925; *Gaulden v. Southern Pacific Co.* (1948), 78 F. Supp. 651, Aff'd. 174 F. 2d 1022; *Moleton v. Union Pac. R.R. Co., et al.* (Utah Sup. Ct., 1950), 219 P. 2d 1080, Cert. Den., 340 U.S. 932, 95 L. Ed. 672, 71 Sup. Ct. 495.

The most recent case in point is the *Moleton Case*, *Supra*. In that case the Plaintiff was alleging that he was an employee of the carrier within the meaning of the Act, even though his contract of employment was with the Pacific Fruit Express Company, because he was injured while servicing a car being hauled in a train by the Defendant. The Supreme Court of Utah, after analyzing the facts, concluded that the carrier did not have the right of control, and therefore, denied the claimant a recovery. This Court denied the Petition for a Writ of Certiorari.

The switching of Railway cars in larger cities has become a specialized service which is ordinarily performed by a terminal company and not by the Railroad Company which brings the car into the city. See the cases of *Fort Worth Belt Railway Company v. United States* (Ct. Appeals 1927), 22 F. 2d 795, which sets out the activities of the Fort Worth Belt Railway Company, and *Terminal Railway Association v. U. S.* (St. Ct.), 266 U.S. 18, 69 L. Ed. 150, which describes the activities of the Terminal

Railway Association of St. Louis. In addition thereto, the testimony of the witness Magee, shows that the Interstate Commerce Commission makes a distinction between switching carriers and Line Haul carriers, when he testified that the Houston Belt and Terminal Railway Company is classified as Class I among switching carriers by the Interstate Commerce Commission.

In addition to the foregoing, the Texas Legislature has enacted a provision expressly authorizing the organization of Terminal Railway Companies. See Art. 6549 of *Vernon's Annotated Texas Statutes* which reads, in part, as follows:

> "Terminal railways shall have all the rights and powers conferred upon railroads by Chapters 6 and 7 of this title. . . ."

From the foregoing it will be noted that both the Texas Legislature and the Interstate Commerce Commission recognize the distinction between Terminal Railways and Railroads whose tracks go from city to city. Recognizing this distinction the Texas Legislature has authorized the creation of cororations to perform the services of a terminal railway company. There has been no limitation put upon the power of terminal railway companies to contract with other railroad companies. Likewise Congress has authorized common carriers to contract with one another.

The cases have held, uniformly, that where a railroad company utilizes the services of another company, also a common carrier, for a special service, the employees of the other company are not the employees of the Railroad Company within the terms of the Federal Employer's Liability Act. The *Moleton Case, Supra,* is an example of that

principle. Surely in that case the servicing of the cars which were in the defendant's train was as much a performance of the functions of a common carrier as was the switching of the private Railway car on the occasion in question. Yet the plaintiff, in the *Moleton Case, Supra,* was denied a recovery because the element of agency was lacking. He was working for an independent contractor and hence not an employee of the Railway Company. The *Robinson Case, Supra,* is another example of this principle. Certainly the attending upon passengers, in a passenger train, whether they are Pullman passengers or coach passengers, is as much a performance of the function of a common carrier as was the switching of the car in the instant case. Yet the Court denied a recovery in the absence of facts showing an agency relationship. The *Hull Case* and the *Linstead Case, Supra,* are also examples of this principle. In the *Hull Case, Supra,* the element of control was lacking and hence the Supreme Court denied a recovery while in the *Linstead Case, Supra,* the element of control was present and hence the Supreme Court upheld a recovery. The case of *Wingo's Administratrix, Supra,* is another example. In that case the switching of the cars was as much the function of a common carrier as was the switching of the car in the instant case. In that case the Court upheld a verdict for the plaintiff because the element of control was present.

These cases show clearly that a carrier is not responsible for the acts of the employees of its independent contractor when such contractors are engaged in the performance of switching operations.

The intent of Congress is plain from the language used in the portions of the Interstate Commerce Act cited by

Petitioner (49 U.S.C., Sec. 1 (3), (4), and (18)), that the carrier is authorized to contract with other carriers to furnish a portion of the transportation required by such sections. Why else would Congress provide for a division of fares. Congress certainly did not mean that each carrier had to operate a line to each spot in the nation. Congress meant for the carriers to contract with one another, as was done in the instant case. It would be foolish for each carrier that contracts with the Belt, to have switch tracks all over the City of Houston.

The cases relied upon by Petitioner are either not in point or have been discredited. The Shelton Case *(Shelton v. G.C. & S.F. Ry. Co.*, 96 Tex. 301, 72 S.W. 165) is not in point. In that case there was no evidence, as there is in the instant case, that the company switching the car was doing so as an independent contractor. Respondent urged that distinction between the *Shelton Case*, *Supra*, and the instant case, both in the Texas Court of Civil Appeals and in the Supreme Court of Texas. Both of these Courts agreed with Respondent. It is somewhat presumptuous of Petitioner to urge the *Shelton Case* as being authority for his position in this case, where the *Shelton Case* and this case were passed upon by the same Court, and evidently, that Court did not consider the holding in the instant case to be contra to the holding in the *Shelton Case*.

The reasoning of the other case relied upon by Petitioner *(Floody v. Great Northern Railway Company, et al.*, 102 Minn. 81, 112 N.W. 875, 13 L.R.A. (N.S.) 1196, 1199), was rejected by this Honorable Court in the *Hull Case*, *Supra*.

In the *Hull Case* the plaintiff argued that since the Railway Company had the non-delegable duty of the operation

of its road (citing *Central Transportation Co. v. Pullman's Palace Car Co.*, 139 U.S. 24, 35 L. Ed. 55), the plaintiff in the *Hull Case* was an employee of the Reading Company since he was performing a nondelegable duty for the Reading Company, citing the case of *Atlantic Coast Line Ry. Co. v. Treadway*, 120 Va. 735. This argument is shown at the top outside column on P. 671 of 64 L. Ed. The Supreme Court ignored this contention and decided the case on the element of control. Not even the dissenting opinion considered the contention worthy of mention. It only differed with the majority in that it thought the necessary control was present. Since the reasoning of the *Treadway Case, Supra*, has been discredited by the United States Supreme Court and since the *Flood Case, Supra*, is based upon the same reasoning we respectfully submit that they are not any authority for Petitioner's position in this case.

Similarily the *Peters Case* (131 S.W. 917, Mo. App.), cited on P. 8 of the Petition and the quotation from the Restatement of Torts (cited on P. 10 of the Petition) do not support Petitioner's position. The rule stated there relates to a delegation to a person or firm other than a common carrier. Besides, the *Hull Case, Supra*, the *Moleton Case, Supra*, and the *Robinson Case, Supra*, are contrary to the rule laid down in those authorities when applied to the facts in the instant case.

Section 5 of the Act is quoted on pages 28 and 29 of the petition and provides that "any contract * * * the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this Chapter, shall * * * be void. * * * " Section 5 is not applicable to this suit. It provides that contracts the

purpose of which is to exempt a carrier from liability created under the Act are void. The Act did not create liability upon the carrier for the negligence of the employees of its independent contractors. The Act only creates liability upon the carrier for the negligence of its "officers, agents and employees." It is not responsible for the acts of its independent contractor. Section 5 only applies in instances where the carrier would be responsible to the employee under the terms of the Act but for a contract or rule. In such instance the contract or rule is void. That isn't the situation in this case where Respondent is not responsible to Petitioner, not because of a contract or rule, but rather because of the legal relationship created by the contract, between Respondent and the Houston Belt & Terminal Railway Company.

In the case relied upon by Petitioner in his petition, *Philadelphia, Baltimore & Washington RR. Co. v. Schubert*, 224 U.S. 603, 56 L. Ed. 911, the court had under consideration a contract between a carrier and its employee which provided that the company should deduct the sum of $2.10 from the employee's wages each month to be placed in a relief fund. The contract further provided that in case of injury the acceptance of benefits from the relief fund would constitute a release and the assertion of a claim or institution of a suit would bar any further payments from the fund. Justice Hughes had this contract before him when he made the remarks quoted on page 11 of the petition. At page 916, the court stated:

> "The statute (45 U.S.C.A. 51) provides that 'every common carrier * * * shall be liable in damages to any person suffering injury while he is employed by such carrier * * * resulting in whole or in part from the negligence of any of the officers, agents, or em-

> ployees of such carrier. * * * ' That is the liability which the Act defines and which this action is brought to enforce. It is to defeat that liability for the damages sustained by Schubert which otherwise the company would be bound under the statute to pay, that it relies upon his contract of membership in the relief fund, and upon the regulation which was a part of it. But for the stipulation in that contract, the company must pay; and if the stipulation be upheld, the company is discharged from liability. The conclusion cannot be escaped that such an agreement is one for immunity in the described event, and as such it falls under the condemnation of the statute."

This Honorable Court will note that Justice Hughes is holding that the contract in question is one of immunity. Manifestly, that isn't even slightly similar to the contract in the instant case. The Petitioner cites not one single case to support his contentions under this point. The cases of *Moleton v. Union Pacific RR Co., Supra*, and *Gaulden v. Southern Pacific Co.*, 78 Fed. Supp. 651 (1948), affirmed 174 F. 2d 1022 support Respondent's position. The fact situations in those cases are very similar to the instant case.

We submit that the record in this case wholly fails to show that the Houston Belt & Terminal Railway Company was used by Respondent as a device to obtain the forbidden end. Just as in the *Moleton Case, supra*, no one concerned with the operation of the Terminal "thought the railroad was performing the services, and merely took on the express terminal company for the purpose of acquiring the use of their employees."

Petitioner's contention that the Belt was acting as Respondent's agent on the occasion in question is not sound. In *Cimorelli v. New York Central Railway Company*

(Ct. Appeals, 6th Cir., 1945), 148 F. 2d 575, the Court stated the applicable question in cases of this nature, to be as follows:

> "Whether Appellee, (the Railway Company) for whom the work was being done, had given up its proprietorship of the particular business to the Duffy Construction Company and had thus divested itself of the right of control, to the extent that it had no longer a legal right to terminate the work or direct it?"

The Court, in the *Cimorelli Case*, went further and set out certain tests by which the answer to the above question could be determined. The Court stated the following to be the tests.

> "One of the tests is who has the right of control over the work being done. Other recognized tests are the existence of a contract for the performance by a person of a certain piece or kind of work at a fixed price, the independent nature of the contractor's business, his employment of assistants with the right to supervise their activities, his obligation to furnish necessary tools, supplies, and materials, his right to control the progress of the work except as to final results, the time for which the workmen are employed, the method of payment, whether by time or job, and whether the work is part of the regular business of the employer. The important test is the control over the details of the work reserved by the employer and to what extent the person doing the work is in fact independent in its performance."

These are substantially the same tests as set forth in the other cases cited, supra. In the *Moleton Case*, *Supra*, the Court stated the tests in the following words:

"The Court has considered five elements in determining the question:

(1) the selection and employment of the servant;
(2) the payment of his wages;
(3) the power to discharge the servant;
(4) the power to control his action; and
(5) the person whose work is being done by the servant. Murray v. Wasatch Grading Co., 73 Utah 430, 274 P. 940.

The first four of these, clearly, under the facts of the present case, point to the express company as the responsible employer. As to the fifth, we believe, in this case, that the express company was the one whose work was being done. Of course, the railroad will ultimately benefit from it, but we do not believe that anyone concerned thought the railroad was performing the services, and merely took on the express company for the purpose of acquiring the use of their employees. It is, in a sense, a specialized service which has been recognized as such for years."

We respectfully ask the Court to compare the facts in he instant case with the tests laid down in the *Moleton Case, Supra.* Here the Belt had the right to select and mploy the switchmen. Likewise, here the Belt paid he switchmen, had the right to discharge them, the power o control them, and the switchmen were doing the work f the Belt. The switching of cars was the object for hich the Belt was created, and the switchmen in switchng the car in question, were performing, for the Belt, he very function for which it was created.

Also, we ask the Court to compare the facts in the in- tant case with the tests set out in the *Cimorelli Case, upra.* In the instant case the Belt had the right of conrol. It was the Belt's right to furnish what personnel it

thought necessary, what tools and machinery it thought necessary. Also, the Belt was paid by the job. The amount of remuneration received by the Belt depended upon the number of cars it handled for Respondent. Certainly this is consistent with an independent contractor relationship.

The *Cimorelli Case, Supra*, also stated one of the tests to be whether the work is part of the regular business of the employer. We have demonstrated in the preceding pages of this brief that the switching of railroad cars in larger cities has for many years been done by Terminal Companies. See *Ft. Worth Belt Railway Co. v. U. S., Supra* (22 F. 2d 795) and *Terminal Railway Ass'n. v. U. S., Supra* (266 U.S. 18, 69 L. Ed. 150). This fact is further shown by the testimony of the witness Magee, regarding classification of Railroad Companies by the Interstate Commerce Commission and by the provisions of Vernon's Annotated Civil Statutes (Art. 6549 and Sections 67 and 72 of Article 1302), authorizing the creation of corporations for this very purpose. These factors certainly show that switching in the larger cities, like furnishing and servicing refrigerator cars *(Moleton v. Union Pac., Supra)*, "is, in a sense, a specialized service which has been recognized as such for years." Thus, the Belt, in switching the car in question, was not performing a part of Respondent's work.

As the Court of Civil Appeals points out in its opinion (Pages 13-16 of Petition for Writ of Certiorari), the Belt owns the switch yards and terminal facilities where the accident in question occurred (Page 16 of Petition), employs, pays, disciplines, and discharges its own employees, and determines the claims of said employees, and has made contracts with the various Unions concerning its employees (Page 17 of Petition), owns and leases loco-

motives and other equipment necessary for its business (Page 17 of Petition), employs a Purchasing Agent, and makes purchases pursuant to authority given by its Executive Committee, which is made up of some of the members of its Board of Directors (Page 17 of Petition). The principal part of the Belt's business is to switch cars, both for its proprietary lines and for other lines using its facilities, and all this it does with its own equipment, operated and directed by its own employees.

The evidence in this case certainly meets all the tests set out by the Court in the *Cimorelli Case, Supra.* Neither Respondent, nor any of its employees had the right to control or direct the switching crew in question. In fact, the contract in effect provided that the Belt was an independent contractor (Page 14 of Petition). The exact wording of the Section is as follows:

> "The Terminal Company shall have the *exclusive management and control* of the *operation, maintenance, repair* and *renewal* of the Terminal facilities and every part thereof, and shall establish rules and regulations governing the operation of trains within and upon the Terminal Facilities . . . The railway companies agree to comply and cause their employees to comply with such rules and regulations."

Clearly, this excerpt which provides that the Belt, and only the Belt, shall have control of the operation of the Terminal, negatives any idea that Respondent had any control whatsoever over the Terminal operations.

The evidence cited by Petitioner as supporting the jury's agency finding, wholly fails to support such finding. The fact that Respondent owned 50% of the Capital Stock, elected four (4) of its Directors and represented to the

Interstate Commerce Commission that it and the other Stockholders "jointly controlled" the Belt, is no evidence of the type of control required to show agency. *Pullman's Palace Car Company v. Missouri Pacific Railway Company*, 29 L. Ed. 499, 502. The Stockholders of every company jointly control the company and elect the Board of Directors. Yet such joint control does not make the corporation the agent of each stockholder. The provision of the contract, whereby the railway companies could request the Belt to discharge an employee who was unfit to perform his duties, is a reasonable provision (*Friedman v. Vandalia Railroad Company* (Ct. App., 1918), (254 F. 292). It is the Belt, not Respondent, who can discharge the employee.

While Respondent may have objected to the Belt switching cars that came into Houston over the lines of the Texas & New Orleans Railroad Company, there is no evidence that the Belt refused to switch such cars. The only vidence is that the Belt would require payment from the consignee of the switching charges. The Belt was not depriving itself of anything, since payment from the consignee was as good as payment from the Texas & New Orleans Railroad Company.

The use by the Interstate Commerce Commission of the word "agent" in its approval of the contract which went into effect in 1950, subsequent to the date of the accident in question, is of no probative value on this issue. The word "agent" is often used to describe independent contractor relationships. *Gaulden v. Southern Pac. Co.* (D.C., 1948), 78 F. Supp. 651, aff'd. 174 F. 2d 1022. It is clear from the excerpt, that the Commission was not concerned with the issue at hand. It made no reference to the traditional tests. Indeed, the Commission does not con-

cern itself with the point at hand. The Commission may have been thinking of an agency relationship within the meaning of the Carmack Amendment (49 U.S.C.A., Sec. 20), where each carrier is the agent of the initial carrier. *Galveston H. & S. A. Ry. Co. v. American Grocery Company* (1931), 36 S.W. 2d 985, 992. But the Federal Employers Liability Act did not use the word "agent" in that sense. It used the word in the conventional sense. *Hull v. Philadelphia & Reading Railway Co., Supra.*

Conclusion

The intent of Congress is plain. In order to hold the carrier liable for injuries to its employees, the carrier or its agent or employees, must have been negligent. The negligent act in the instant case was the act of the Belt, and the Belt only. The fact that Petitioner chose not to sue the Belt should not create liability on the part of Respondent.

Respectfully submitted,

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